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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,378	07/06/2004	Arthur E. Onweller	1067.01001	4377
24254	7590	11/30/2004	EXAMINER	
ROGER A JACKSON, ESQ 800 PENNSYLVANIA SUITE 1504 DENVER, CO 80203-3185			BASINGER, SHERMAN D	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/710,378	Applicant(s) ONWELLER, ARTHUR E.	
	Examiner Sherman D. Basinger	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 20-25 is/are rejected.
- 7) ☒ Claim(s) 18 and 19 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because the lines, numbers and letters are not well defined-especially in figures 2 and 3 where smearing of the lines makes it difficult to see what is being shown. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3617

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 7, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Raistakka.

Raistakka discloses a marine

mooring line

vermin shield 10 to prevent the

passage of vermin crawling along a marine mooring line A

from land to a pleasure craft, comprising:

(a) a disc 12 having a disc

axial axis perpendicular to a face

of said disc, the disc axial axis being positioned in a

central portion of said disc, said disc also includes an

aperture 23 through said

disc coincident to the disc axial

axis being positioned such that said aperture uses the

disc axial axis as a centerline, said aperture

is sized and

configured as a passage for the

marine mooring line,

said disc also includes a radial slot, pocket 18, through said disc co-incident to the

disc axial axis, said radial slot extending

from said aperture to a periphery of said disc, said slot

having a radial axis parallel

to said slot;

(b) a closure 13 sized

and adapted to insert into said slot in

a closure pivotal movement arc around pivot pin 22 and approximately parallel to the disc axial

axis, said closure 13 is in

a closed state (figure 1) when

inserted into said slot and

is **substantially** flush with said

disc face, said closure also sized and adapted to manually extract from said slot in the closure pivotal movement arc approximately parallel to the disc axial axis,

said closure 13 is in an open state (figure 3) when extracted from said slot to allow the marine

mooring line to pass through

said slot from said

periphery to said aperture, said closure including a first end substantially flush with said

disc periphery when said closure is in the closed state,

said closure also including an opposing second end 26

adapted to partially compress the mooring line against

said aperture when said closure is in the closed state,
wherein said disc resists axial movement along the
mooring line when said closure is in the
closed state with said disc face generally perpendicular to a
mooring line
axial axis; and

(c) means 32 for urging said closure from the open state to
the closed state.

The disc face of Raistakka is considered to be a smooth substantially
continuous surface with the exception of the marine
mooring line protruding therefrom, when
said closure is in the closed
state, wherein the vermin encounters said
disc face while crawling along the mooring line to help
prevent passage of the vermin beyond said disc face.

The area of disc 12 above end portion 20 is an area for placement of a pleasure craft
registration number.

Cord 30 is considered to be part of the means for urging the closure. Cord 30, at its
lower end, is oriented substantially parallel to the slot radial axis when in the position
shown in
figure 1.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raistakka in view of Ferland.

The disc of Raistakka is not disclosed as being constructed of a material with a mass density less than that of water such that it will float. Ferland makes his disc of plastic, plastic having a density less than that of water such that products made from plastic will float. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to make the disc of Raistakka of plastic similar to the plastic of Ferland. Motivation to do so is that the disc can be formed by molding, will be resistant to rust or corrosion, will be light, and will be cheap to make.

Ferland does not disclose making the disc of polyethylene, polypropylene, and polyurethane materials. However, such materials are well known plastics. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use any one of the above materials to make the disc of Raistakka as each or all have properties which make them easy to mold. Also products made from them are cheap to make, light and resistant to corrosion.

Art Unit: 3617

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raistakka in view of Johnstone.

Raistakka does not disclose a lockable element to secure closure 13 in a closed state.

Note lock 6 of Johnstone. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to provide in addition to urging means 32 of Raistakka a lock similar to 6 of Johnstone to hold closure 13 of Raistakka in the closed position. Motivation to do so is to make sure forces which can overcome urging means 32 do not lead to opening of the closure 13 such that rats can pass to the pleasure craft.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raistakka and Johnstone as applied to claim 5 above, and further in view of Ferland as combined with Raistakka for claim 2.

Double Patenting

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 1-17 and 20-25 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-17 and 19-24 of copending Application

No. 10/604526. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

It is noted that claims 5, 6 and 20 of the instant application claim a lockable element as opposed to the lock claimed in claims 5, 6 and 19 of copending application 10/604526; however, claims 5, 6 and 20 of the instant application despite this difference in verbiage are still claiming the same invention as a lockable element is a lock.

It is also noted that claim 11 of the instant application uses the verbiage "further comprising" as opposed to "further including" used in claim 11 of copending application 10/604526; however, despite this difference in verbiage, claim 11 of the instant application is still claiming the same invention.

It is finally noted that claim 21 of the instant application adds the language "using said lockable element" with respect to the language found in claim 20 of the copending application 10/604526; however, since the step of locking the closure in the closed state after step f would require using the lock claimed in claim 19 of the copending application 10/604526 or using the lockable element claimed in claim 20 of the instant applicant, claim 21 of the instant application is claiming the same invention as claim 20 of the copending application.

Allowable Subject Matter

10. Claims 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Onweller is a prior patent of the inventive entity of the instant application.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 703-308-1139. The examiner can normally be reached on M-F (6:00-2:30 ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sherman D. Basinger,
Primary Examiner
Art Unit 3617
11/24/03

Sdb
11/24/04